Symbiosis International University,

Pune

Ph. D. Programme

(Faculty of Law)

Ph. D. Proposal

Ph D Topic: Prosecutors in India and France: A Comparative Study

Candidate Name: Ashish Deshpande

(Symbiosis Law School, Pune)

Under Guidance of : Dr. Yuvakumar Reddy

Prosecutors in India and France:

A Comparative Study

Introduction:

In a criminal trial, the public prosecutors conduct the prosecution of the accused on behalf of the state. Decisions of the courts depends on the skills of the public prosecutors. Prosecutors institutes and carries proceedings in a court of law, especially in criminal court. (*The Law Lexicon, 2nd Edition (2006)Wadhava -publication, p.no1547.)* Research oriented and sincere prosecutors definitely contribute in the well organized criminal justice system in India. One of the aims of Criminal Justice Reform 2003 was to face the challenge before existing criminal Justice System in India as to improve the level of professional competence of the prosecutors and to insure they function in coordination with the investigation agency[1]. The prosecutors are one of the major components in the criminal justice system "The prosecutors have more control over life, liberty and reputation than any other person in America."[2] Therefore, in most of the countries prosecutors are indispensible authority.

Statement of Problem

Inefficien trole of prosecutors in criminal justice system of India is one of the reasons for low conviction rates in India. This situation is fatal to protection of society and for the faith of public towards law. The conviction rate of the state is a mirror as to the efficient functioning of prosecution system. As per N. R. Madhav Menon[3],"One of the main objects of the criminal justice administration is to punish those who violate laws and commit crimes. Fear of punishment works as the most effective deterrence for the people inclined to commit crime. The Court after completion of the trial or the summary proceedings assesses the evidence and pronounces its judgment. The Court convicts an accused if the prosecution succeeds in proving the charge against him. It is only after conviction in a criminal case that the Court sentences punishment on accused which may be death penalty or imprisonment or fine or both imprisonment and fine. In some cases the convicts are not sentenced to any of these punishments and are released after admonishment and on giving a bond of good behaviour for certain commonly known as 'probation'. Hence irrespective of the amount of

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[1] Committee on Reforms of Criminal Justice System, Government of India, Ministry of Home Affairs ,Vol.1, p.no.21

[2] Brain Forst, *Errors of Justice, nature, sources and remedies* Cambridge publication,1st edition,.p.no.112

[3] N.R. Madhav Menon, *Criminal Justice India Series*, Vol. 4,Allied publication, p.no.129

punishment the conviction itself is an effective instrument to deter people from committing crimes."

Rationale of the Study

Prosecution mechanism of any nation is a helping hand of that state. Degeneration of prosecution ruins basic democratic values expected under the Indian Constitution. Public Prosecutors must have duty to the public and to the court. If the prosecutor is biased that endangers the entire administration of the country In *State of Bihar V. Ram Naresh Pandey*[4] it was held that the public prosecutor in larger sense is the officer of the court and under a duty to assist the court in fair administration of justice. Prosecution plays a crucial role in the administration of justice. The public Prosecutor is under a duty to not merely to seek convictions, but to act impartially and place before the court the evidence to enable the court to decide on the accused person's innocence. The recent example for the inefficient prosecutor is "Best Bakery Case" i.e. *Zahira Habibullah Sheikh v State of Gujrath*[5]In this case, the state and the material witnesses approached the Supreme Court seeking retrial, as a trial was not conducted properly due to the witness turning hostile and non-cooperation of the public prosecutors. The Supreme Court then ordered retrial in the state of Maharashtara.The researcher has selected the India and France for this research because; these nations have different criminal justice systems.

Objective of the Study

i) To critically analyze the criteria for success of prosecution in India and *vis a vis a* French prosecution machinery.

ii) To observe role of supportive system in the success of prosecution in India vis a vis supportive system in France.

iii) To analyze suggested Reforms in area of prosecution in India.

Hypothesis of the Research

- Supportive system is one of the important factors for the failure or success of prosecutors
- Coordination of the supportive systems in France is one of the causes of high conviction rates
- Inadequate Supportive systems in India are one of the causes of low conviction rates

[4] A.I.R 1957,S.C.389
[5](2004)4SCC158

Nature of Information Needed:

Substantive and procedural criminal laws, polices, rules, regulations, recommendations of the Law Commissions, etc primary data of in India and France. Also scholarly test books, journals, judgments of the higher courts, reflections on those judgments, etc. information is needed.

Approach to be used in Research

The researcher states the statutory provisions as they stand, tries to interpret them and ultimately wants to criticize the statutory provisions and gives certain suggestion.

Methodology

Doctrinal methodology will be used to address a relevant material .The Non-doctrinal research methodology is not selected by the researcher taking in to account time, financial sources, energy and scope of this topic.

Scope of the study

The research paper covers prosecutors' role in India and France which covers appointment procedure, independence of institution, functions, duties, independence of the office from executive control, and conviction rates precisely

The Test Books, Decisions of High courts and Supreme Court, Statutes of the Central government, Rules and Regulations of the state governments, Amendment provisions, Recommendations made by various committees and commissions, articles from All India Reports , news papers, periodical reports, Material from Word Wide and online database sources are used.

Significance of Research Topic:

A great significance for the Law Students, Law Professors and Future researchers, advocates and judges, law practitioners, ministers, law reformers, and the general public at large. In *Shrilekha Vidyarthi v State of Uttar Pradesh*[6],it has been ruled that the office of the prosecutors is a public office of much importance and the present spoil system of appointment of the office of public prosecutors followed by political parties should done away with.

Motivation for the Researcher:

The researcher did internship in the office of Public Prosecutor and motivated He has an interest in criminal laws and the justice delivery machinery.

[6] (1991) 1 SCC

Literature Review

a) **Philip L. Recichel, Comparative Criminal Justice Systems- Topical Approach, 1994**

This book provided the researcher area of criminal justice systems of particular states, the importance of comparative study, international perspectives, Crime on world scene, legal traditions, Substantive law and procedural laws, in four legal traditions,The merits demerits of particular legal system, their impact on the prosecutions, and their role to cop with the crime rate in that states. This book provides Adversarial and Inquisitorial Criminal Justice System; This book concludes at Japanese criminal Justice is best among all states.

b) Dr. G.P. Tripathi, The Comparative Law (Jurisprudence), Second Edition, 1980, Law publication

This book stressed on the significance of Comparative methodology in doctrinal research, provides importance of studying legal systems of the other states. This book mentioned how the comparative law is a branch of legal science.Criminal Justice System in the Civil Law system and in the Common Law system is distinguished in the book.

c) The Law of Criminal Procedure,S C. Sarkar, Wadhava and Company.

This book provides theoretical framework of the prosecutors in India with the most relevant recent case laws

d) French Legal system, Justice Devid Annoussamy, Institute of Comparative Law and Jurisprudence, First edition, 1995

This textbook is an outline of the French legal system and its Indian connections.A unique combination of history, constitution, administrative tribunals, civil and criminal justice delivery systems, and criminal law with the judicial and prosecution officers in France. For authenticate data as to appointments, powers, duties and limitations of the prosecutors, the researcher is grateful to this book

e) Committee on Reform of Criminal Justice System, Government of India

(Popularly Known as *Malimath Committee Report, 2003*)product of incessant research of the members of the committee for comprehensive study of criminal justice system in India and in France .For fruitful research, great efforts had done by these members to find out lacunae in the existing criminal justice system in India, what should be done to rectify this system, and what provisions to be borrowed from the Adversarial criminal justice system in the Indian Criminal Justice System.

The report has made exhaustive study of basic notions under evidence Act e.g. burden of proof, protection to innocents, etc. in the Indian criminal Justice System and in the French criminal Justice System. The committee differentiated between the criminal justice systems of India with the other inquisitorial criminal justice systems. Lastly appreciated police and prosecutor’s coordination as followed in the France.

e)197th Law Commissions Report:

The researcher is grateful to this Report. In this report various recommendations as to the appointment, duties and perspectives for efficient prosecutors are elaborated.

f) 14th Report of the Law Commission of India

Regarding Separation of Prosecutors from the Police wing and establishment of Directorate of Public Prosecutors

g) Surendra Prakash Tyagi, Session Trial Practice and Procedure, Published by Vinod Publishing House, (1989)

This is an industrious study of, which painstakingly presented a fairly comprehensive understanding of role of public prosecutors in India.In the book, the author unable to enlighten on public prosecutors in the other countries. The author has made a greatest contribution in stating the nature and significance of the Public Prosecutors, the powers, duties, obligations, and classification of the public prosecutors, important cases ruled by the Supreme Court and various High Courts of India.At the time of referring statutory provisions, the duties of the prosecutors are elaborated in broader manner. In mentioning duties, this book has a greatest contribution in deep study on various duties to be done by the prosecutors in Indian criminal justice system. E.g. .Duty to prove guilt of the accused beyond reasonable doubts, Duty to explain delay in First Information Report before the court, duty to prove venue of occurrence of an offence, etc .are mentioned. Further the important powers and privileges of the prosecutors in India are briefly mentioned with specific reference of citations.In the light of procedural aspects under the Code of Criminal Procedure and the Indian Evidence Act, all the powers, privileges, duties and citations are well elaborated

I) Dr.N.R. Madhav Menon, Criminal Justice India Series, (Vol.1,2, 3,4,7,8,9, and 10) Allied Publication, Kolkatta

An incredible work done by Dr. N.R. Madhav Menon in this book is an initiative of school of criminal justice Every volume has great contribution The author has placed various challenges before criminal justice system in India, and prescribed solutions on them. Also, The historical background, supportive system responsible for success, and low rate of convictions.

h) Dr. Taps Kumar Banergee, Background to Indian Criminal Law, 1st edition, (1990)

Historical background of a prosecutionwing in India, peculiarly on the how prosecution wing got shape in the British India is mentioned in this book.

i) Criminal Justice, James Inciardi, 6th Edition, 2004

Brief outline of the French Criminal Justice system and specific powers of the Prosecutors are given under this book.

j) Article on Plea Bargaining: A comparative Legal and Economic Analysis by Yehonatan Givati

General notion of Plea Bargaining, with specific reference of United States of America and France is given under this marvellous article.

k) The Bulletin of the Directorate of Prosecution, Maharashtra State, Mumbai, October 2007

This is a official use copy where many prosecutors in the state of Maharashtra expressed their opinions for the problems and prosectus of the prosecutors with their experiences.

K) Sentencing and Criminal Justice, Fourth Edition, Andrew Ashworth, University of Oxford

In this book, the sentencing policies, aims and principles have been elaborated broadly. The deterrence, preventions and reformation of the criminals are elaborated.

L) Criminology and Criminal Justice(Comparing , Contrasting, and Intertwining Disciplines)

m) K Duntzker, Butterworth Publication

Amis of criminal justice delivery system, difference between civil and criminal justice system , similarities and classifications of both the systems has been elaborated under this text book.

m) Article on Investigation and Prosecution in Criminal Cases , by S Govind Swaminathan, Advocate General Madras, Indian Journal of Criminology(1973 to 1978) Vol 5

Independent police and prosecution machinery with its importance is given in this article.

n) Article on Sentencing Criminal Justice Today, Frank Schmalleger

Philosophy of the sentencing policies with illustrations is well elaborated under this outstanding text.

o) Law of Evidence in India, Batuk Lals,2006 Edition

Comparative study of the criminal justice system in India, Pakistan, Bangladesh, Shrilanka and Maleshia has been done in this book. Case Laws governing respective chapters also provided.

p) Criminal Justice, Prof K I Vibhute Eastern Book Company, 2005 Edition.

Along with the powers, duties and the functions of the prosecutor, Amendment 2005 for the Directorate of Prosecutors and its role is scrutinised in this book

q) The Law of Criminal Prosecutions and Defence by Mohmed Asif, District and Sessions Judge (Retired)

The role to be performed by the police and prosecutors, the history, recommendations of 14th Law Commission and its impact, etc. Provisions are covered under this book.

r) The Supreme Court Cases, 2004, Vol 4 Eastern Book Company

Judgement in Best Bakery Case, the most debated case of Zahira Habibulla Sheikh V State of Gujrat, 2004 has been scrutinised. The biasness of the prosecutors, their collusion with the rulling parties lead the Supreme Court of India to give an option to the victims to suggest the name of another public Prosecutor replacing the earlier.

Unpublished Literature Review:

Interactions with the advocates, local public prosecutors, academicians, law commission of India members, Special Public Prosecutors, Magistrates, Retired District and Session Judges, on this topic. The discussion was face to face and was sometimes telephonic.

Limitations of the Research:

- This research paper is concentrating on prosecutors in India and France.
- Due to Time limits , this research paper is not concentrating state wise prosecutors in India

Conclusion:

Indian Criminal Justice System may take some of the suitable provisions of the French criminal justice system regarding efficient prosecutors. If powers of the Indian Prosecutors are enhanced like French prosecutors, the criminal justice machinery can become more efficient machinery in India.

Web Sites Referred

Answers.com,BritannicaConciseEncyclopedia"www.answers.com/topic/prosecutor?cat=biz-fin",(Date 25Th Jan 2011)

Answer.com, Burden of proof," www.answers.com/topic/burden-of-proof-logicalfallacy?cat=technology

BritannicaConciseEncyclopedia:prosecutorwww.answers.com/topic/pros ecutor?cat=biz-fin, (Date of visit 8th April 2011.)

Art. 74-1 of the Code of Criminal Procedure in France Prosecution: ComparativeAspectsCriminalInvestigationAndTheProsecutor"http://law.jrank.org/pages/1854/ -Comparative-Aspects-Criminal-investigation- Prosecution prosecutor.html", (Date of visit 18th March 2011.)

CodeOfCriminalProcedure“,http://www.legislationline.org/upload/legislations/ac /a6/848f4569851e2ea7eabfb2ffcd70.htm” (Date of visit 8th March 2011.)

Guidelines on the Role of Prosecutors, Adopted by the Eighth United Nations Congress **“**www.unhchr.ch/html/menu3/b/h_comp45.htm”, (date of visit 8thMay 2008)

PublicProsecutor'sOfficeLaw“www.humanrights.lv/doc/latlik/prok.htm”, (Date of visit 8th March 2011.)

IndiaTogether, PublicProsecutorsNeedofReform“www.indiatogether.org/2005/jul/gov-prosecute.htm”, (Date of visit 8th March 2011.)

Jacques Borricand World Fact book of Criminal Justice Systems “http://www.ojp.usdoj.gov/bjs/pub/ascii/wfbcjfra.txt”(Date of Visit 17th April 2008)

NicholasCowdery,AMQCIndependenceofProsecution,“www.lawcouncil.asn.au/shared/2441848500.pdf”,(Date of visit 8th March 2011.)

Recommendations of the Malimath Committee on reforms of Criminal JusticeSystem,http://www.pucl.org/Topics/Law/2003/malimathrecommendations.htm(Date of visit 23rd March 2011)